

21

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
QUEEN CITY SHEET METAL )  
AND ROOFING, INC., )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 78-245

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the issuance of two \$250 civil penalties for the alleged violation of Regulation I, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, at a formal hearing on January 12, 1979, in Seattle, Washington. Hearing examiner Nancy E. Curington presided.

Appellant appeared by Jerry Puetz and Oscar W. Puetz, part owners; respondent was represented by its attorney, Keith D. McGoffin. Reporter Susan Cookman recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From

NC/LB

1 testimony heard and exhibits examined, the Pollution Control Hearings  
2 Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
6 a certified copy of its Regulation I containing respondent's regulations  
7 and amendments thereto, of which official notice is taken.

8 II

9 On October 6, 1978 at approximately 1:30 p.m., respondent's  
10 inspector, in response to a complaint, visited the corner of Third  
11 and Jefferson Streets in downtown Seattle. He observed appellant's  
12 roofing operations at the Morrison Hotel consisting in part of a kettle  
13 used to heat asphalt, on the sidewalk beside the hotel. Respondent's  
14 inspector took movies of an emission from the kettle, and recorded an  
15 opacity of 30-100% for six of six minutes. The lid of the kettle  
16 was open one minute, during which time the opacity was 100%. As  
17 a result, appellant was issued Notice of Violation No. 15453 of  
18 Section 9.03(b)(2) of Regulation I (R-5), for which a \$250 civil  
19 penalty was subsequently assessed (Notice of Civil Penalty No. 4023)  
20 (R-6).

21 III

22 On October 17, 1978 at approximately 3:00 p.m., respondent's  
23 inspector again visited the site, to conduct a follow-up inspection.  
24 He took three photographs and recorded an opacity of 100% from  
25 appellant's kettle for six of six minutes. The lid of the kettle  
26 was open for the entire period, while a workman swept the pavement

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 around the kettle. As a result, appellant was issued Notice of Violation  
2 No. 15461 of Section 9.03(b)(2) of Regulation I (R-10), for which a  
3 \$250 civil penalty was subsequently assessed (Notice of Civil Penalty  
4 No. 4034) (R-11).

5 IV

6 The construction site has been designated by the Seattle Fire  
7 Department as Fire Zone 2, which carries with it a prohibition on  
8 the use of asphalt tankers. Appellant received a permit to operate  
9 a kettle, after inspection by the fire department. Respondent's  
10 witness testified that a "smokeless pot" which in normal operation  
11 is capable of meeting the emission standards of Regulation I, is  
12 available for use in such areas. Appellant was unaware of such  
13 equipment, and will further explore its availability with the agency.

14 V

15 Section 9.03(b)(2) of respondent's Regulation I makes it unlawful  
16 for any person to cause or allow the emission of an air contaminant for  
17 a period totaling more than three minutes in any one hour which is of  
18 an opacity equal to or greater than 20%.

19 Section 3.29 provides for a civil penalty of up to \$250 per day  
20 for each violation of Regulation I.

21 VI

22 Any Conclusion of Law which should be deemed a Finding of Fact is  
23 hereby adopted as such.

24 From these Findings the Board comes to these

25 CONCLUSIONS OF LAW

26 I

27 Appellant contends that the films and photographs taken by

1 respondent's inspector should not have been taken without prior  
2 notification. We assume the appellant's arguments to be based upon  
3 the due process provisions of the Washington and the United States  
4 Constitutions. Referring to Chemithon Corp. v. Puget Sound Air  
5 Pollution Control Agency, 19 Wn. App. 689 (1978), we note that the  
6 court stated, "To establish a violation of PSAPCA regulations by  
7 observations of smoke emissions from a public area without prior  
8 notice to the operator of the plant does not violate the due process  
9 clause of the Washington State Constitution, Article 1, Section 3."  
10 19 Wn. App. at 696. Consequently, we find that the appellant's arguments  
11 have no merit.

## 12 II

13 On October 6, 1978, appellant violated Section 9.03(b)(2) by  
14 causing the emission of white smoke which exceeded the limits  
15 established by the regulations. The \$250 civil penalty is reduced  
16 to \$100, which amount is a more appropriate penalty under the  
17 circumstances of this event.

## 18 III

19 On October 17, 1978, appellant violated Section 9.03(b)(2) by  
20 causing the emission of white smoke which exceeded the limits established  
21 by the regulations. The \$250 civil penalty is affirmed in its entirety.

## 22 IV

23 Any Finding of Fact which should be deemed a Conclusion of Law  
24 is hereby adopted as such.

25 From these Conclusions the Pollution Control Hearings Board  
26 makes this

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER


ORDER

The \$250 civil penalty resulting from the Notice of Violation No. 15453 is reduced to \$100 and affirmed. The \$250 civil penalty resulting from Notice of Violation No. 15461 is affirmed.

DATED this 8<sup>th</sup> day of February, 1979.

POLLUTION CONTROL HEARINGS BOARD

  
DAVE J. MOONEY, Chairman

  
CHRIS SMITH, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER